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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में बिल्न पृष्ठ संलग्न दी जाती है जिससे इक वह अलग संकाय के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

BILL No. 126 OF 1977

A Bill to provide for, in the public interest, the acquisition and transfer of the right, title and interest of the undertakings of Messrs Smith, Stanistreet and Company Limited, Calcutta and for matters connected therewith or incidental thereto.

WHEREAS Messrs Smith, Stanistreet and Company Limited, Calcutta were engaged in the manufacture and distribution of pharmaceuticals and chemicals which are essential to meet the needs of the public;

AND WHEREAS the management of the undertakings of the Company was in a manner highly detrimental to the public interest and had suffered heavy losses;

AND WHEREAS the management of the Company was taken over by the Central Government under section 18A of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS for the purpose of reconstructing and rehabilitating the undertakings of the Company so as to subserve the interest of the general public by the augmentation and distribution of the different varieties of essential pharmaceuticals and chemicals produced by the said Company, and to ensure the continued supply thereof, it is necessary to acquire the right, title and interest of the undertakings of Messrs Smith, Stanistreet and Company Limited, Calcutta;

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

**Short title
and com-
mence-
ment.**

Definitions.

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Smith, Stanistreet and Company Limited (Acquisition and Transfer of Undertakings) Act, 1977.

(2) It shall be deemed to have come into force on the 1st day of October, 1977.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 1st day of October, 1977;

(b) "Company" means the Smith, Stanistreet and Company Limited, being a company as defined in the Companies Act, 1956 and having its registered office at 18, Convent Road, Calcutta-700014;

(c) "Commissioner" means the Commissioner of Payments appointed under section 14;

(d) "notification" means a notification published in the Official Gazette;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "specified date" means such date as the Central Government may, for the purposes of any of the provisions of this Act, by notification, specify and different dates may be specified for different provisions of this Act;

(g) words and expressions used herein and not defined but defined in the Companies Act, 1956 have the meanings respectively assigned to them in that Act.

1 of 1956.

1 of 1956.

CHAPTER II

ACQUISITION AND TRANSFER OF THE UNDERTAKINGS OF THE COMPANY

**Transfer
to and
vesting in
Central
Govern-
ment of
the under-
takings of
the Com-
pany.**

**General
effect of
vesting.**

3. On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, be transferred to, and shall vest in, the Central Government.

4. (1) The undertakings of the Company shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company, whether within or outside India, and all books of

account, registers and all other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner or appointing any receiver in respect of the whole or any part of such property shall be deemed to have been withdrawn.

(3) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in section 7, and also out of the monies determined under section 8, but, no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(5) If on the appointed day, any suit, appeal or other proceeding by or against the Company, of whatever nature in relation to any property which has vested in the Central Government, under section 3, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of the Company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Company.

5. (1) Every liability of the Company in respect of any period prior to the appointed day, shall be the liability of the Company and shall be enforceable against it and not against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company.

(2) For the removal of doubts, it is hereby declared that,—

(a) save as otherwise expressly provided in this Act, no liability of the Company in relation to its undertakings in respect of any period prior to the appointed day, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company;

(b) no award, decree or order of any court, tribunal or other authority in relation to the undertakings of the Company, passed after the appointed day, in respect of any matter, claim or dispute, which arose before that day, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company;

(c) no liability incurred by the Company before the appointed day, for the contravention of any provision of law for the time being

Central
Govern-
ment or
Govern-
ment com-
pany not
to be
liable for
prior
liabilities.

in force, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company.

**Power of
Central
Govern-
ment to
direct ves-
ting of the
undertak-
ings of the
Company
in a Gov-
ernment
company.**

6. (1) Notwithstanding anything contained in sections 3 and 4, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings which have vested in that Government under section 3, shall, instead of continuing to vest in that Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest of the Company in relation to its undertakings, vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

CHAPTER III PAYMENT OF AMOUNTS

**Payment
of amount.**

7. For the transfer to, and vesting in, the Central Government, under section 3, of the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, there shall be given by the Central Government to the Company, in cash, and in the manner specified in Chapter VI, an amount of three crores and seventy-four thousand rupees.

**Payment
of further
amount.**

8. (1) For the deprivation of the Company of the management of its undertakings, there shall be given to the Company by the Central Government an amount calculated at the rate of ten thousand rupees per annum for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Central Government and ending on the appointed day.

(2) The amount specified in section 7 and the amount determined under sub-section (1) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the appointed day and ending on the date on which the payment of the amount is made by the Central Government to the Commissioner.

(3) The amount determined in accordance with the provisions of sub-sections (1) and (2) shall be given by the Central Government to the Company in addition to the amount specified in section 7.

(4) For the removal of doubts, it is hereby declared that the liabilities of the Company in relation to its undertakings which have vested in the Central Government under section 3, shall be discharged from the amount referred to in section 7, and also from the amounts determined under sub-sections (1) and (2), in accordance with the rights and interests of the creditors of the Company.

CHAPTER IV

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

9. (1) The general superintendence, direction, control and management of the affairs and business of the undertakings of the Company, the right, title and interest in relation to which have vested in the Central Government under section 3, shall,—

(a) where a direction has been issued by the Central Government under sub-section (1) of section 6, vest in the Government company specified in such direction; or

(b) where no such direction has been issued by the Central Government, vest in one or more Custodians appointed by the Central Government under sub-section (2),

and thereupon the Government company so specified or the Custodian so appointed, as the case may be, shall be entitled to exercise all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

(2) The Central Government may appoint one or more individuals or a Government company as the Custodian of the undertakings of the Company in relation to which no direction has been issued by it under sub-section (1) of section 6.

10 (1) On the vesting of the management of the undertakings of the Company in a Government company or on the appointment of a Custodian, all persons in charge of the management of the undertakings of the Company immediately before such vesting or appointment, shall be bound to deliver to the Government company or the Custodian, as the case may be, all assets, books of account, registers or other documents in their custody relating to the undertakings of the Company.

(2) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Government company or the Custodian as to its or his powers and duties and the Government company or Custodian may also, if it or he so desires, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted by it or him or in relation to any other matter arising in the course of such management.

(3) The Custodian shall receive from the funds of the undertakings of the Company such remuneration as the Central Government may fix and shall hold office during the pleasure of the Government.

11. The Custodian of the undertakings of the Company shall maintain the accounts of the undertakings of the Company in such form and in such manner and under such conditions as may be prescribed and the provisions of the Companies Act, 1956, shall apply to the audit of the accounts so maintained as they apply to the audit of the accounts of a company.

Management,
etc.,
of the
undertak-
ings of the
Company.

Duty of
persons in
charge of
manage-
ment of
the under-
takeings of
the Com-
pany to
deliver all
assets, etc.

Accounts.
and audit.

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES OF THE COMPANY

**Employ-
ment of
em-
ployees to
continue.**

12. (1) Every person who has been, immediately before the appointed day, employed by the Company in relation to its undertakings, shall become, on and from the appointed day, an employee of the Central Government or, as the case may be, of the Government company referred to in section 6, and shall hold office or service under the Central Government or Government company, as the case may be, with the same remuneration and upon the same terms and conditions, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration, terms and conditions of service are duly altered by the Central Government or the Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force the transfer of the services of any officer or other person employed in the undertakings of the Company to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947.

**Provident
and other
funds.**

13. (1) Where the Company has established a provident, superannuation, welfare or other fund for the benefit of the persons employed in the undertakings of the Company, the monies relatable to the employees, whose services have become transferred by or under this Act to the Central Government or Government company, shall, out of the monies standing, on the appointed day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to, and shall vest in, the Central Government or the Government company, as the case may be.

(2) The monies which stand transferred under sub-section (1) to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or the Government company in such manner as may be prescribed.

CHAPTER VI

COMMISSIONER OF PAYMENTS

**Appoint-
ment of
Commis-
sioner of
Payments.**

14. (1) The Central Government shall, for the purpose of disbursing the amounts payable to the Company under sections 7 and 8, by notification, appoint a Commissioner of Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

15. (1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the Company—

- (a) an amount equal to the amount specified in section 7; and
- (b) an amount equal to the amount payable to the Company under section 8.

Payment
by the
Central
Govern-
ment to
the Com-
missioner.

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner, shall be deposited by him to the credit of the said account and the said deposit account shall be operated by the Commissioner.

(3) Interest accruing on the amounts standing to the credit of the deposit account referred to in sub-section (2) shall enure to the said account.

16. (1) The Central Government or the Government company, as the case may be, shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the Company in relation to its undertakings which have vested in the Central Government, or the Government company, realised after the appointed day notwithstanding that the realisations pertain to a period prior to the appointed day.

Certain
powers of
the Cen-
tral Gov-
ernment
or Gov-
ernment
company

(2) The Central Government or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day for discharging any liability of the Company, in relation to any period prior to the appointed day; and every such claim shall have priority, in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the Central Government or the Government company.

(3) Save as otherwise provided in this Act, the liabilities of the Company in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the Company.

17. Every person having a claim against the Company shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days and not thereafter.

Claims to
be made
to the
Commis-
sioner.

Priority of claims.

18. The claims arising out of the matters specified in the Schedule shall have priorities in accordance with the following principles, namely:—

(a) category I will have precedence over all other categories and category II will have precedence over category III, and so on;

(b) the claims specified in each of the categories, shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

Examination of claims

19. (1) On receipt of the claims made under section 17, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same in accordance with such order of priorities.

(2) If, on examination of the claims, the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category.

Admission or rejection of claims.

20. (1) After examining the claims with reference to the priority set out in the Schedule, the Commissioner shall fix a date on or before which every claimant shall file the proof of his claim, failing which he shall be excluded from the benefit of the disbursements made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in English language and in one issue of the daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

45 of 1860.

2 of 1974.

- (c) the reception of evidence on affidavits;
- (d) the issuing of any commission for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, the appeal shall lie to the High Court at Calcutta and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

21. After admitting a claim under this Act, the amount due in respect of such claims shall be paid by the Commissioner to the person or persons to whom such sums are due, and, on such payment, the liability of the Company in respect of such claim shall stand discharged.

22. (1) If, out of the monies paid to him in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the Company.

(2) Where any machinery, equipment or other property has vested in the Central Government or a Government company under this Act, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government or the Government company to continue to possess such machinery, equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the 4th day of May, 1972.

23. Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made, shall be transferred by the Commissioner to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of the revenue.

24. (1) Where any liability of the Company arising out of all or any of the items specified in category I, category II, category III or category IV of the Schedule are not discharged fully by the Commissioner out of the amount paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undischarged, and that liability shall be assumed by the Central Government.

(2) The Central Government may, by order, direct the Government company to take over any liability assumed by that Government under sub-section (1), and on receipt of such direction, it shall be the duty of the Government company to discharge such liability.

Disbursement
of
money by
Commiss-
ioner to
claimants.

Disburse-
ment of
amounts
to the
Company.

Undis-
bursed or
unclaimed
amount
to be
deposited
with the
general
revenue
account

Assump-
tion of
liability

Act to have overriding effect.

Contracts to cease to have effect unless ratified by the Central Government or Government company.

Payments.

CHAPTER VII MISCELLANEOUS

25. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority.

26. (1) Every contract entered into by the Company in relation to its undertakings for any service, sale or supply, and in force immediately before the appointed day, shall, on and from the expiry of one hundred and eighty days from that day, cease to have effect, unless such contract is before the expiry of the period, ratified, in writing, by the Central Government or Government company, and, in ratifying such contract, the Central Government or Government company may make such alteration or modification therein as it may think fit:

Provided that the Central Government or the Government company shall not omit to ratify a contract, and, shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government or Government company.

(2) The Central Government or Government company shall not omit to ratify a contract, and, shall not make any alteration or modification therein, except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

27. Any person who,—

(a) having in his possession, custody or control any property forming part of the undertakings of the Company, wrongfully withholds such property from the Central Government or the Government company or any person or body of persons authorised by that Government or Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of the undertakings of the Company or wilfully withholds or fails to furnish to the Central Government, or the Government company or any person or body of persons authorised by that Government or Government company any document relating to such undertakings which may be in his possession, custody or control or fails to deliver to the Central Government or the Government company or any person or body of persons authorised by that Government or Government company, any assets, books of account, registers or other documents in his possession, custody or control relating to the undertakings of the Company; or

(c) wrongfully removes or destroys any property forming part of the undertakings of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

28. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

29. No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Custodian of the undertakings of the Company or the Government company or any officer or other person authorised by that Government or the Government company for anything which is in good faith done or intended to be done under this Act.

Protection
of action
taken in
good faith.

30. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the power conferred by section 31, may also be exercised by any person or persons as may be specified in the notification.

Delegation
of powers.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

31. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which and the manner in which an intimation referred to in sub-section (3) of section 4 shall be given;

(b) the form and the manner in which, and the conditions under which, the Custodian shall maintain accounts as required by section 11;

(c) the manner in which monies in any provident or other fund referred to in section 13 shall be dealt with;

(d) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

32. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

Declaration as to policy of the State.

33. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

Explanation.—In this section “State” has the meaning as in article 12 of the Constitution.

Repeal and saving

34. (1) The Smith, Stanistreet and Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977, is hereby repealed.

13 of 1977.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See sections 18, 19, 20, 22 and 24)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY

PART 'A'

POST-TAKE-OVER MANAGEMENT PERIOD

Category I.

- (a) Wages, salaries and other dues of the employees of the Company.
- (b) Loans advanced by the Central Government.
- (c) Loans advanced by Indian Drugs and Pharmaceuticals Limited.
- (d) Loans advanced by banks guaranteed by the Central Government.
- (e) Credit availed of for purposes of trade or manufacturing operations.

Category II.

- (a) Revenue, taxes, cesses, rates or other dues to the Central Government or a State Government.
- (b) Sales tax, rates and taxes, contributions to be made to the Employees' State Insurance Fund and Additional Dearness Allowances payable to employees.

PART 'B'

PRE-TAKE-OVER MANAGEMENT PERIOD

Category III.

Arrears in relation to provident fund, salaries and wages and other amounts due to employees of the Company.

Category IV.

Principal amount due in relation to all secured loans.

Category V.

Amounts due by way of interest due in relation to the secured loans referred to in category IV.

Category VI.

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

Category VII.

- (a) Any credit availed of for purposes of trade or manufacturing operations.
- (b) Any other dues.

STATEMENT OF OBJECTS AND REASONS

Messrs. Smith, Stanistreet and Company Limited, Calcutta were engaged in the manufacture of drugs and pharmaceuticals which were essential to the needs of the country. The Company began to show steady decline in production from 1970 onwards and incurred considerable losses. The Company was also being mismanaged. After investigation into the affairs of the Company through an investigation Committee, the management of its undertakings was taken over on 4th May, 1972 by the Central Government acting under section 18A of the Industries (Development and Regulation) Act, 1951. The Indian Drugs and Pharmaceuticals Ltd., a Public Sector Undertaking was appointed as authorised controller. As the Company had to be modernised and expansion undertaken in order to ensure the augmentation and distribution of the different varieties of essential pharmaceuticals and chemicals produced by the Company and to ensure the continued supply thereof in public interest, it was necessary to acquire the right, title and interest of the undertakings of the Company. This was done by the Smith, Stanistreet and Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977. The Bill seeks the replacement of the Ordinance.

NEW DELHI;

H. N. BAHUGUNA,

The 2nd November, 1977

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the payment, in cash, and in the manner specified in Chapter VI of an amount of Rs. 3,00,74,000 (Rupees three crores and seventy-four thousand), for vesting in the Central Government, the right, title and interest of the Company in relation to the undertakings owned by it

2 Sub-clause (1) of clause 8 provides for payment of a further amount in cash, in consideration for the deprivation of the Company of the management of its undertakings, an amount calculated at the rate of Rs 10,000 (Rupees ten thousand only) per annum, for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Government and ending with the appointed day. It is estimated that this amount will be of the order of Rs. 55,000 (Rupees fifty-five thousand only)

3 Sub-clause (2) of clause 8 provides for payment of simple interest on the amounts specified in clause 7 and sub-clause (1) of clause 8 at the rate of 4 per cent per annum for the period commencing on the appointed day (1st October, 1977) and ending with the day on which the payment of these amounts is made by the Central Government to the Commissioner of Payments. The interest payment in terms of the provisions of the said clause is of the order of Rs. 60,000 (Rupees sixty thousand only).

4. Clause 14 of the Bill provides for the appointment of the Commissioner of Payments by the Central Government with adequate staff to assist him for the purpose of disbursing the amounts payable to the Company. The salary and allowances of the Commissioner of Payments and his staff and expenditure on office and establishment will be defrayed out of the Consolidated Fund of India. The estimated expenditure on this account is likely to be of the order of Rs 10,000 per month

5. The liabilities relating to gratuity payable to employees amounting to Rs. 37 lakhs as well as balance of post-take-over liabilities of sundry creditors amounting to Rs. 24.56 lakhs and principal amounts due in relation to secured loans (pre-take-over) amounting to Rs 48 lakhs, are not likely to be discharged fully by the Commissioner of Payments out of the amount paid to him under clause 7 of the Bill. In the interest of the Company and its continued functioning it is proposed that the Central Government may assume these liabilities, as provided in sub-clause (1) of clause 24.

6. Funds will also have to be provided to the Company for modernisation and expansion. The expenditure on this account is necessary to make the Company financially viable. The total estimated expenditure on the modernisation and expansion scheme is likely to be of the order of Rs 1 crore (Rupees one crore only). A sum of Rs 50 lakhs has been provided in the budget for 1977-78 towards Non-Plan loans for working capital for this Company and may have to be disbursed to the Company during the year.

7. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. Such rules may provide for matters, such as—

- (a) the time within which and the manner in which an intimation referred to in sub-clause (3) of clause 4 of the Bill shall be given;
- (b) the form and the manner in which and the conditions under which the Custodian shall maintain the accounts as provided in clause 11; and
- (c) the manner in which monies in any provident or other fund referred to in clause 13 shall dealt with.

2. The matters in respect of which such rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No 133 OF 1977

A Bill further to amend the Payment of Bonus Act, 1965.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment of Bonus (Amendment) Act, 1977.

(2) It shall be deemed to have come into force on the 3rd day of September, 1977.

2. The Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act) shall,—

(a) in relation to a factory or other establishment to which the principal Act applies immediately before the commencement of this Act; and

(b) in relation to a banking company and the Industrial Reconstruction Corporation of India to which the principal Act applies on and from such commencement by virtue of this Act,

have effect in respect of the accounting year commencing on any day in the year 1976 as if the amendments specified in sections 3 to 20 had been made in that Act.

Explanation.—In this section, the expressions “banking company” and “accounting year” shall have the meanings respectively assigned to them in clauses (8) and (1) of section 2 of the principal Act.

Short title and commencement.

Act 21 of 1965 to have modified effect for a particular period

Substitution of long title.

3. In the principal Act, for the long title, the following long title shall be substituted, namely:—

“An Act to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.”.

Amend-
ment of
section 2.

4. In section 2 of the principal Act, in sub-clause (a) of clause (4), after the words “being a company”, the brackets and words “(other than a banking company)” shall be inserted.

Substitu-
tion of
new sec-
tion for
section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

Computa-
tion of
gross
profits

“4. The gross profits derived by an employer from an establishment in respect of the accounting year shall—

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule;

(b) in any other case, be calculated in the manner specified in the Second Schedule.”.

Amend-
ment of
section 6.

6. In section 6 of the principal Act,—

(a) in clause (b), for the words “development rebate or development allowance”, the words “development rebate or investment allowance or development allowance” shall be substituted;

(b) in clause (d), for the words “Second Schedule”, the words “Third Schedule” shall be substituted.

Amend-
ment of
section 7.

7. In section 7 of the principal Act, in clause (e), for the brackets and words “(other than development rebate or development allowance)”, the brackets and words “(other than development rebate or investment allowance or development allowance)” shall be substituted,

Amend-
ment of
section 10.

8. In section 10 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Notwithstanding anything contained in sub-section (1), every employer shall be bound to pay to every employee a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this sub-section shall have effect in relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.”;

(b) in sub-section (3), for the words “Third Schedule”, the words “Fourth Schedule” shall be substituted.

Amend-
ment of
section 15

9. In section 15 of the principal Act, for the words “Third Schedule” wherever they occur, the words “Fourth Schedule” shall be substituted

10. In section 16 of the principal Act, in sub-section (1B), for the words "Third Schedule" at both the places where they occur, the words "Fourth Schedule" shall be substituted.

Amendment of section 16.

11. In section 21 of the principal Act, in the *Explanation*, for the words and figures "sections 22, 23 and 25", the words and figures "sections 22, 23, 24 and 25" shall be substituted.

Amendment of section 21.

12. In section 23 of the principal Act, in sub-section (1), for the word and figures "section 25", the words and figures "sections 24 and 25" shall be substituted.

Amendment of section 23.

13. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 24

"24 (1) Where any dispute of the nature specified in section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act.

Audited accounts of banking companies not to be questioned.

(2) Nothing contained in sub-section (1) shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Regulation Act, 1949".

10 of 1949.

14. In section 27 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of section 27.

"(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949".

10 of 1949.

15. In section 31A of the principal Act, in the proviso, for the words "Provided that", the words "Provided further that" shall be substituted and before the proviso as so amended, the following proviso shall be inserted, namely:—

Amendment of section 31A.

"Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under sub-section (2A) of section 10 shall be null and void in so far as it purports to deprive them of such right".

16. In section 32 of the principal Act,—

Amendment of section 32.

(a) clause (vii) shall be omitted;

(b) in clause (ix),—

(i) sub-clause (ff) shall be omitted;

(ii) in sub-clause (g), after the words "financial institution", the brackets and words "(other than a banking company)" shall be inserted.

Substitution of new sections for section 34.

Employees and employers not to be precluded from entering into agreements for grant of bonus under a different formula

17. For section 34 of the principal Act, the following sections shall be substituted, namely:—

"34. Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act:

Provided that no such agreement shall have effect unless it is entered into with the previous approval of the appropriate Government:

Provided further that any such agreement whereby the employees relinquish their right to receive the minimum bonus under sub-section (2A) of section 10 shall be null and void in so far as it purports to deprive them of such right:

Provided also that such employees shall not be entitled to be paid bonus in excess of—

(a) 833 per cent. of the salary or wage earned by them during the accounting year if the employer has no allocable surplus in the accounting year or the amount of such allocable surplus is only so much that, but for the provisions of sub-section (2A) of section 10, it would entitle the employees only to receive an amount of bonus which is less than the aforesaid percentage, or

(b) twenty per cent. of the salary or wage earned by them during the accounting year

Effect of laws and agreements inconsistent with the Act.

34A. Subject to the provisions of sections 31A and 34, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.".

Amendment of the First Schedule

18. In the principal Act, the First Schedule shall be renumbered as the Second Schedule and,—

(a) in that Schedule as so renumbered—

(i) for the brackets, words and figure "(See section 4)", the brackets, words, figure and letter "[See section 4(b)]" shall be substituted;

(ii) in column (2), against Item No. 2, for the entry "(d) Development rebate/Development allowance reserve.", the entry "(d) Development rebate/Investment allowance/Development allowance reserve." shall be substituted;

(b) before that Schedule as so renumbered, the following Schedule shall be inserted, namely:—

'THE FIRST SCHEDULE

[See section 4(a)]

COMPUTATION OF GROSS PROFITS

Accounting Year ending

Item No.	Particulars	Amount of sub-items	Amount of main items	Remarks
		Rs.	Rs.	
*1. <i>Net Profit</i> as shown in the Profit and Loss Account after making usual and necessary provisions.				
2. <i>Add back</i> provision for :				
(a) Bonus to employees.				
(b) Depreciation.				
(c) Development Rebate Reserve.				<i>See foot-note (i)</i>
(d) Any other reserves.				<i>See foot-note (i)</i>
Total of Item No. 2		Rs.		
3. <i>Add back</i> also :				
(a) Bonus paid to employees, in respect of previous accounting years.				<i>See foot-note (i)</i>
(b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—				
(i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and				
(ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.				
(c) Donations in excess of the amount admissible for income-tax.				
(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax).				<i>See foot-note (i)</i>

*Where the profit subject to taxation is shown in the Profit and Loss Account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

Item No.	Particulars	Amount of sub-items	Amount of main items	Remarks
		Rs.	Rs.	
(e)	Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949.			10 of 1949
(f)	Losses of, or expenditure relating to, any business situated outside India.			
	Total of Item No. 3	Rs.		
4.	Add also income, profits or gains (if any) credited directly to published or disclosed reserves, other than—			
(i)	capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax);			
(ii)	profits of, and receipts relating to, any business situated outside India;			
(iii)	income of foreign banking companies from investments outside India.			
	Net total of Item No. 4	Rs.		
5.	Total of Item Nos. 1, 2, 3 and 4.	Rs.		
6. Deduct :				
(a)	Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax).			<i>See</i> foot-note (2)
(b)	Profits of, and receipts relating to, any business situated outside India.			<i>See</i> foot-note (2)
(c)	Income of foreign banking companies from investments outside India.			<i>See</i> foot-note (2)
(d)	Expenditure or losses (if any) debited directly to published or disclosed reserves, other than—			
(i)	capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax);			
(ii)	losses of any business situated outside India.			

Item No.	Particulars	Amount of sub-items	Amount of main items	Remarks
		Rs.	Rs.	
(e)	In the case of foreign banking companies proportionate administrative (over-head) expenses of Head Office allocable to Indian business.			See foot-note (3)
(f)	Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, or development rebate, if written back.			See foot-note (2)
(g)	Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.			See foot-note (2)
Total of Item No. 6		Rs.		
7.	Gross profits for purposes of bonus (Item No. 5 minus Item No. 6)	Rs.		

*Explanation.—*In sub-item (b) of item 3, “approved gratuity fund” has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

Foot-notes—

- (1) If, and to the extent, charged to Profit and Loss Account.
- (2) If, and to the extent, credited to Profit and Loss Account.
- (3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per Consolidated Profit and Loss Account, adjusted as in Item No. 2 above only).

19. In the principal Act, the Second Schedule shall be renumbered as the Third Schedule and in that Schedule as so renumbered,—

- (a) in column (2), against Item No. 1, for the word “Company”, the words “Company, other than a banking company” shall be substituted;
- (b) after Item No. 1 and the entries relating thereto, the following item and entries shall be inserted, namely :—

Amend.
ment of
the Second
Schedule

(1)	(2)	(3)
“2. Banking company		(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable ;

(1)

(2)

(3)

(ii) 7.5 per cent. of its paid up equity share capital as at the commencement of the accounting year;

(iii) 5 per cent. of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year;

(iv) any sum which, in respect of the accounting year, is transferred by it—

(a) to a reserve fund under sub-section (i) of section 17 of the Banking Regulation Act, 1949; or

10 of 1949.

(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India,

whichever is higher :

Provided that where the banking company is a foreign company within the meaning of section 591 of the Companies Act, 1956, the amount to be deducted under this Item shall be the aggregate of—

1 of 1956.

(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds ;

(1)

(2)

(3)

(ii) 7·5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds;

(iii) 5 per cent of such amount as bears that same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;

(iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of Banking Regulation Act, 1949, not exceeding the amount required under the aforesaid provision to be so deposited.”;

(c) in the *Explanation*, for the figures, brackets and word “1(iii) and 3 (ii)”, the figures, brackets and word “1 (iii), 2(iii) and 3(ii)” shall be substituted.

20. In the principal Act, the Third Schedule shall be renumbered as the Fourth Schedule. Amendment of the Third Schedule.

9 of 1977.

21. (1) The Payment of Bonus (Amendment) Ordinance, 1977 is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, by virtue of the amendments thereto made by the said Ordinance, shall be deemed to have been done or taken under the principal Act by virtue of the corresponding amendments thereto made by this Act.

STATEMENT OF OBJECTS AND REASONS

In 1975, a number of substantial amendments were made in the Payment of Bonus Act, 1965 by means of the payment of Bonus (Amendment) Ordinance, 1975 promulgated on the 25th September, 1975. This Ordinance was later replaced by the Payment of Bonus (Amendment) Act, 1976 (23 of 1976). As a result of these amendments, a minimum bonus of four per cent only was payable in respect of the accounting year commencing on any day in the year 1974 and no minimum bonus was payable in respect of subsequent accounting years if there were no allocable surplus in those years. Some other changes made by the Amendment Act also adversely affected the workers.

2. Several representations on the amendments were received by the Government. After careful consideration of the matter, Government decided that the Payment of Bonus Act, 1965 should be amended to provide, *inter alia*, for the payment of a minimum bonus of 8 33 per cent, whether there was allocable surplus or not. It was also decided that these amendments should have effect in respect of the accounting year commencing on any day in the year 1976.

3. Since Parliament was not in session and since it was necessary to take immediate action, the Payment of Bonus (Amendment) Ordinance, 1977 was promulgated by the President on the 3rd September, 1977. The present Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

The 11th November, 1977

RAVINDRA VARMA.

Memorandum regarding modification contained in the Bill to replace the Payment of Bonus (Amendment) Ordinance, 1977

The Bill closely follows the Ordinance with a slight modification explained below

2. A new clause 7 has been added to the Bill providing for a consequential amendment to clause (e) of section 7 of the Payment of Bonus Act, 1965. This is only to rectify an omission which had crept in the Ordinance.

BILL NO 130 OF 1977

A Bill to provide for the acquisition and transfer of the undertakings of Messrs. Gresham and Craven of India (Private) Limited for the purpose of ensuring the continuity of production of goods which are vital to the needs of the Railways and of the industries manufacturing engineering products and for matters connected therewith or incidental thereto

WHEREAS Messrs. Gresham and Craven of India (Private) Limited were engaged in the manufacture and production of components of rolling stock like vacuum brake equipment, ejectors, steam brake valves and vacuum exhausters and the like needed by the Railways and the industries manufacturing engineering products;

AND WHEREAS as a result of the losses suffered by the Company, there had been a closure of the works owned by the Company;

AND WHEREAS for the purpose of speedily bringing the closed works of the Company into operation, the management of the undertakings of the Company was taken over by the Central Government for a limited period under section 18A of the Industries (Development and Regulation) Act, 1951;

65 of 1951.

AND WHEREAS it is necessary to acquire the undertakings of the Company to ensure the continuance of the production of goods which

are vital to the needs of the Railways and of the industries manufacturing engineering products;

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Act, 1977.

Short title and Commencement

(2) The provisions of sections 28 and 29 shall be deemed to have come into force on the 30th day of September, 1977 and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of August, 1977.

2. In this Act, unless the context otherwise requires,—

Definitions

(a) "appointed day" means the 1st day of August, 1977;

(b) "Braithwaite and Company Limited" means the Government company known as the Braithwaite and Company Limited in which the undertakings of the Braithwaite and Company (India) Limited together with the right, title and interest of the said Company thereon vested with effect from the 1st day of December, 1976, in pursuance of the notification of the Government of India in the Ministry of Industry (Department of Heavy Industry) No. S.O. 771(E), dated the 3rd December, 1976, issued under subsection (1) of section 6 of the Braithwaite and Company (India) Limited (Acquisition and Transfer of Undertakings) Act, 1976;

(c) "Commissioner" means the Commissioner of Payments appointed under section 14;

36 of 1976.

1 of 1956

(d) "Company" means the Gresham and Craven of India (Private) Limited, being a company as defined in the Companies Act, 1956, and having its registered office at 22-Gobra Road, Calcutta-14;

1 of 1956

(e) "Government company" has the meaning assigned to it by section 617 of the Companies Act, 1956;

(f) "notification" means a notification published in the Official Gazette;

14 of 1977.

(g) "Ordinance" means the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "specified date" means such date as the Central Government may, for the purpose of any provision of this Act, by notification, specify and different dates may be specified for different provisions of this Act;

(1) words and expressions used herein and not defined but defined in the Companies Act, 1956, shall have the meanings, respectively, assigned to them in that Act.

1 of 100.

CHAPTER II

ACQUISITION AND TRANSFER OF THE UNDERTAKINGS OF THE COMPANY

**Transfer
of and
vesting in
the Cen-
tral Gov-
ernment of
the under-
takings of
the Com-
pany.**

**General
effect of
vesting.**

3. On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, stand transferred to, and shall vest in, the Central Government.

4. (1) The undertakings of the Company shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company, whether within or outside India, and all books of account registers and all other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner or appointing any receiver in respect of the whole or any part of such properties shall be deemed to have been withdrawn.

(3) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property, shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in section 8, and also out of the monies determined under section 9, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(5) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government, under section 3, instituted or preferred by or against the Company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of transfer of the

undertakings of the Company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government, or the Braithwaite and Company Limited, or, where the undertakings of the Company are directed, under section 7, to vest in a Government company, that Government company.

5. (1) Every liability of the Company in respect of any period prior to the appointed day, shall be the liability of the Company and shall be enforceable against it and not against the Central Government, or the Braithwaite and Company Limited, or, where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company

(2) For the removal of doubts, it is hereby declared that,—

(a) save as otherwise expressly provided in this Act, no liability of the Company in respect of any period prior to the appointed day shall be enforceable against the Central Government, or the Braithwaite and Company Limited, or, where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company;

(b) no award, decree or order of any court, tribunal or other authority in relation to the undertakings of the Company, passed after the appointed day, in respect of any matter, claim or dispute which arose before that day, shall be enforceable against the Central Government, or the Braithwaite and Company Limited, or, where the undertakings of the Company are directed under section 7, to vest in a Government company, against that Government company;

(c) no liability incurred by the Company before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government, or the Braithwaite and Company Limited, or, where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company.

6. (1) Notwithstanding anything contained in sections 3 and 4, the Central Government shall, as soon as may be, after the promulgation of the Ordinance, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, which have vested in the Central Government under section 3, shall, instead of continuing to vest in the Central Government, vest in the Braithwaite and Company Limited either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest of the Company in relation to its undertakings vest in the Braithwaite and Company Limited under sub-section (1), the Braithwaite and Company Limited shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Braithwaite and Company Limited.

Central Government or the Braithwaite and Company Limited or the Government company not to be liable for prior liabilities.

Vesting of the undertakings of the Company in the Braithwaite and Company Limited.

Power of
Central
Govern-
ment to
direct
vesting of
the under-
takings of
the Com-
pany in a
Govern-
ment
company.

7. (1) Notwithstanding anything contained in sections 3, 4 and 6, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, which have vested in the Central Government under section 3 and thereafter in the Braithwaite and Company Limited, under section 6, shall, instead of continuing to vest in the Braithwaite and Company Limited, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest of the Company in relation to its undertakings vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government or the Braithwaite and Company Limited in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

CHAPTER III

PAYMENT OF AMOUNTS

Payment
of amount.

8. For the transfer to, and vesting in, the Central Government, under section 3, of the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, there shall be given by the Central Government to the Company, in cash, and in the manner specified in Chapter VI, an amount of rupees one hundred and seventy-six lakhs.

Payment
of further
amount.

9. (1) For the deprivation of the Company of the management of its undertakings, there shall be given to the Company by the Central Government an amount calculated at the rate of rupees fifty thousand per annum for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Central Government and ending on the appointed day.

(2) In consideration of the retrospective operation of the provisions of sections 3, 4 and 5, there shall also be given, in cash, by the Central Government to the Company, an amount equal to an amount calculated at the rate of rupees fifty thousand per annum for the period commencing on the appointed day and ending on the date of promulgation of the Ordinance.

(3) The amount specified in section 8 and the amount determined under sub-sections (1) and (2) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the date of promulgation of the Ordinance and ending on the date on which payment of such amounts is made by the Central Government to the Commissioner.

(4) The amounts determined in accordance with the provisions of sub-sections (1), (2) and (3) shall be given by the Central Government to the Company in addition to the amount specified in section 8.

(5) For the removal of doubts, it is hereby declared that the liabilities of the Company, in relation to its undertakings which have vested in the Central Government under section 3, shall be discharged from the amounts referred to in section 8, and also from the amounts determined under sub-sections (1), (2) and (3) in accordance with the rights and interests of the creditors of the Company.

CHAPTER IV

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

10. (1) The Braithwaite and Company Limited in which the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings vested under section 6 shall be entitled to exercise all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

(2) The general superintendence, direction, control and management of the affairs and business of the undertakings of the Company, the right, title and interest in relation to which have vested, under section 3, in the Central Government and, under section 6, in the Braithwaite and Company Limited shall, where a direction has been made by the Central Government under sub-section (1) of section 7, vest in the Government company specified in such direction, and thereupon the Government company so specified shall be entitled to exercise all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

11. (1) On the vesting of the management of the undertakings of the Company in the Braithwaite and Company Limited, all persons in charge of the management of the undertakings of the Company immediately before such vesting shall be bound to deliver to the Braithwaite and Company Limited all assets, books of account, registers or other documents in their custody relating to the undertakings of such Company.

(2) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Braithwaite and Company Limited as to its powers and duties and the Braithwaite and Company Limited may also, if it so desires, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted by it or in relation to any other matter arising in the course of such management.

(3) On the vesting of the management of the undertakings of the Company in a Government company, the provisions of sub-sections (1) and (2) shall apply to, or in relation to, the Government company as they apply to, or in relation to, the Braithwaite and Company Limited, subject to the modification that the references to the Braithwaite and Company Limited shall be construed as references to the Government company.

Management etc.
of the
undertakings
of the
Company.

Duty of
persons in
charge of
management
of the
undertakings
of the
Company to
deliver all
assets, etc.

Employ-
ment of
certain
employees
to con-
tinue.

CHAPTER V

PROVISIONS RELATING TO THE EMPLOYEES OF THE COMPANY

12. (1) Every person who has been, immediately before the appointed day, employed in any undertaking of the Company shall become, on and from the appointed day or such later date, as the case may be, an employee of the Braithwaite and Company Limited, or, as the case may be, of the Government company in which the right, title and interest of the Com-

pany in relation to its undertakings, have vested under this Act, and shall hold office or service under the Braithwaite and Company Limited, or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Braithwaite and Company Limited, or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Braithwaite and Company Limited, or by the Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in any undertaking of the Company to the Braithwaite and Company Limited, or the Government company, shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947.

(3) Where, under the terms of any contract of service or otherwise, any person, whose services become transferred to the Braithwaite and Company Limited, or the Government company, by reason of the provisions of this Act, is entitled to any arrears of salary or wages or any payments for any leave not availed of or any other payment, not being payment by way of gratuity or pension, such person may enforce his claim against the Company, but not against the Central Government, or the Braithwaite and Company Limited, or the Government company.

Provident
fund and
other
funds.

13. (1) Where the Company has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the persons employed in any of the undertakings of the Company, the monies relatable to the officers or other employees, whose services have become transferred by or under this Act to the Braithwaite and Company Limited, or the Government company, shall, out of the monies standing, on the appointed day, to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and shall vest in, the Braithwaite and Company Limited, or the Government company, as the case may be.

(2) The monies which stand transferred under sub-section (1) to the Braithwaite and Company Limited, or the Government company, as the case may be, shall be dealt with by the Braithwaite and Company Limited, or the Government company, in such manner as may be prescribed.

CHAPTER VI

COMMISSIONER OF PAYMENTS

Appoint-
ment of
Commis-
sioner of
Payments.

14. (1) The Central Government shall, for the purpose of disbursing the amounts payable to the Company under sections 8 and 9, by notification, appoint a Commissioner of Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the

powers exerciseable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exerciseable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

15. (1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the Company—

(a) an amount equal to the amount specified in section 8, and

(b) an amount equal to the amount payable to the Company under section 9.

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and the said deposit account shall be operated by the Commissioner.

(3) The interest accruing on the amount standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of the Company.

16. (1) The Central Government, or the Braithwaite and Company Limited, or the Government company, as the case may be, shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the Company, in relation to its undertakings which have vested in the Central Government, or the Braithwaite and Company Limited, or the Government company, realised after the appointed day notwithstanding that the realisation pertains to a period prior to the appointed day.

(2) The Central Government, or the Braithwaite and Company Limited, or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day for discharging any liability of the Company in relation to any period prior to the appointed day; and every such claim shall have priority in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the Central Government, or the Braithwaite and Company Limited, or the Government company.

(3) Save as otherwise provided in this Act, the liabilities of the Company in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the Company.

Payment
by the
Central
Govern-
ment to
the Com-
missioner.

Certain
powers of
the Cen-
tral Gov-
ernment
or Braith-
waite and
Company
Limited or
Govern-
ment
company

Claims to
be made
to the
Commis-
sioner.

17. Every person having a claim against the Company shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days and not thereafter.

Priority of
claims.

18. The claims arising out of the matters specified in the Schedule shall have priorities in accordance with the following principles, namely:—

(a) Category I shall have precedence over all other categories and Category II shall have precedence over Category III, and so on;

(b) the claims specified in each of the categories shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

Examina-
tion of
claims.

19. (1) On receipt of the claims made under section 17, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same in accordance with such order of priorities.

(2) If, on examination of the claims, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the claims in respect of such lower category.

Admission
or rejec-
tion of
claims.

20. (1) After examining the claims with reference to the priorities set out in the Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim failing which he will be excluded from the benefit of the disbursements made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of a daily newspaper in the English language and in one issue of such daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

5 of 1908.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making an investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) the summoning and enforcing the attendance of any witness and examining him on oath,
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the issuing of any commission for the examination of witnesses.

45 of 1860.
2 of 1974.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, the appeal shall lie to the High Court at Calcutta, and such appeal shall be heard and disposed of by not less than two Judges of that High Court

21. After admitting a claim under this Act, the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such sums are due, and, on such payment, the liability of the Company in respect of such claim shall stand discharged.

Disburse-
ment of
money by
the Com-
missioner
to clai-
mants.

22. (1) If, out of the monies paid to him in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the Company.

Disburse-
ment of
amounts
to the
Company.

(2) Where the possession of any machinery, equipment or other property, has vested in the Central Government or the Braithwaite and Company Limited, or the Government company, under this Act, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government, or the Braithwaite and Company Limited, or the Government company to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day.

Undisbursed or unclaimed amount to be deposited to the general revenue account.

Act to have overriding effect.

Contracts to cease to have effect unless ratified by the Central Government or Braithwaite and Company Limited or Government company

Protection of action taken in good faith.

23. Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made shall be transferred by the Commissioner to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of the revenue.

CHAPTER VII

MISCELLANEOUS

24. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

25. (1) Every contract entered into by the Company in relation to its undertakings for any service, sale or supply, and in force immediately before the appointed day, shall, on and from the expiry of one hundred and eighty days from the date of promulgation of the Ordinance, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the Central Government, or the Braithwaite and Company Limited, or the Government company, and, in ratifying such contract, the Central Government, or the Braithwaite and Company Limited, or the Government company may make such alteration or modification therein as it may think fit:

Provided that the Central Government, or the Braithwaite and Company Limited, or the Government company shall not omit to ratify a contract, and shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government, or the Braithwaite and Company Limited, or the Government company.

(2) The Central Government, or the Braithwaite and Company Limited, or the Government company shall not omit to ratify a contract, and shall not make any alteration or modification therein, except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording, in writing, its reasons for refusal to ratify the contract or for making any alteration or modification therein.

26. (1) No suit, prosecution, or other legal proceeding shall lie against the Central Government or any officer of that Government, or the Braithwaite and Company Limited, or the Government company, or any officer or other person authorised by that Government, or the Braithwaite and Company Limited, or the Government company, for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any of its officers or other employees, or the Braithwaite and Company Limited, or the Government company, or any officer or other person authorised by the Braithwaite and Company Limited, or the Government company, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

27. (1) The Central Government may, by notification, direct that all or any of the powers exerciseable by it under this Act, other than the power conferred by section 30, may also be exercised by such person or persons as may be specified in the notification.

Delegation
of powers.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

28. Any person who,—

Penalties.

(a) having in his possession, custody or control any property forming part of any undertaking of the Company, wrongfully withholds such property from the Central Government, or the Braithwaite and Company Limited, or the Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of any undertaking of the Company or wilfully withholds or fails to furnish to the Central Government, or the Braithwaite and Company Limited, or the Government company, or any person or body of persons specified by that Government, or the Braithwaite and Company Limited, or the Government company, any document relating to such undertaking which may be in his possession, custody or control or fails to deliver to the Central Government, or the Braithwaite and Company Limited, or the Government company, or any person or body of persons specified by that Government, or the Braithwaite and Company Limited, or the Government company, any assets, books of account, registers or other documents in his possession, custody or control, relating to the undertaking of the Company; or

(c) wrongfully removes or destroys any property forming part of any undertaking of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

29. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm.

Power to make rules.

30. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which, and the manner in which, an intimation shall be given to the Commissioner under sub-section (3) of section 4;

(b) the manner in which the monies in any provident fund or other fund referred to in section 13 shall be dealt with;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

31. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

Declaration as to the policy of the State.

32. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

Explanation.—In this section, “State” has the same meaning as in article 12 of the Constitution.

Repeal and saving.

33. (1) The Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977, is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE
(See sections 18, 19, 20 and 22)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY

PART A

Post-take-over management period

Category II

Wages, salaries and other dues of the employees of the Company.

Category II

- (i) Loans advanced by the Central Government
- (ii) Loans advanced by Banks.

Category III

Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations.

Category IV

Any other loans.

Category V

Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

PART B

Pre-take-over management period

Category VI

Arrears in relation to contributions to be made by the Company to the provident fund, salaries, wages and other amounts due to the employees of the Company.

Category VII

Overdrafts from Banks.

Category VIII

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a Local Authority or a State Electricity Board

Category IX

(i) Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations

(ii) Any other dues.

STATEMENT OF OBJECTS AND REASONS

Messrs Gresham and Craven of India (Private) Limited was a private company wholly-owned by the Westinghouse Brake and Signal Company Limited of U.K. and its nominee. For various reasons including mismanagement, the company started incurring losses from 1966 and ultimately it had to be closed down on the 6th January, 1971. It remained closed for three months and then the Government of India, after investigation, took over the management of the company on the 31st March, 1971, under the provisions of section 18A of the Industries (Development and Regulation) Act, 1951. The factory was reopened on the 12th April, 1971. The company is mainly engaged in the manufacture of rolling stock components of the Indian Railways, such as, vacuum brake equipment, ejectors, steam valves, vacuum exhausters, etc. After take-over of the management by the Central Government, there had been considerable progress in the production performance of the company. The actual production for the year 1976-77 had been of the order of Rs 177 lakhs. After careful consideration of the whole matter, the Government decided to acquire the undertakings of this company.

At the time of take-over of the management of the company, it was clear that it was not possible for the company to meet all its past dues. Accordingly, moratorium was imposed on the 14th August, 1972 in accordance with the provisions of section 18FB of the Industries (Development and Regulation) Act, 1951, on realisation of the dues from the company. The period of this moratorium which cannot exceed five years in aggregate, expired on the 13th August, 1977. Since early action was necessary, the Undertakings of the Company were acquired by promulgation of the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977 on the 30th September, 1977.

The Bill seeks to replace the said Ordinance.

NEW DELHI,

GEORGE FERNANDES.

The 10th November, 1977.

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for the payment, in cash, and in the manner specified in Chapter VI of the Bill, an amount of Rs. 1,76,00,000 for vesting in the Central Government, the right, title and interest of the Gresham and Craven of India (Private) Limited in relation to the undertakings owned by it.

2. Sub-clause (1) of clause 9 provides for payment of further amount in cash, in consideration for the deprivation of the Company of the management of its undertakings, an amount to be calculated at the rate of Rs. 50,000 per annum, for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Central Government and ending on the 1st August, 1977, the appointed day. It is estimated that this amount will be of the order of Rs. 3,20,000.

3. Sub-clause (2) of clause 9 provides that in consideration of the retrospective operation of certain provisions of the Bill as specified therein, there shall be given, in cash, by the Central Government to the Company, an amount equal to the amount calculated at the rate of Rs. 50,000 per annum for the period commencing on the appointed day and ending on the date of promulgation of the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Ordinance, 1977. This amount is estimated to be of the order of Rs. 10,000.

4. Sub-clause (3) of clause 9 provides for payment of simple interest at the rate of four per cent, per annum for the period commencing on the date of promulgation of the Ordinance and on the date on which the payment of such amounts is made by the Commissioner of Payments. It is estimated that the interest payment in terms of the provisions of the said sub-clause is likely to be of the order of Rs. 60,000 per month.

5. Clause 14 of the Bill provides for appointment of Commissioner of Payments by the Government with adequate staff to assist him for the purpose of disbursing the amounts payable to the Company. The salary and allowance of the Commissioner of Payments and his staff and expenditure on office and establishment will be defrayed out of the Consolidated Fund of India. The estimated expenditure on this account is likely to be of the order of Rs. 10,000 per month.

6. Funds will also have to be provided for capital expenditure for modernisation and expansion of the undertakings to make them financially viable. It is estimated that about Rs. 77,00,000 may have to be provided on this account during the current financial year (1977-78) and the next financial year (1978-79). This expenditure will also be incurred after due appropriation by Parliament by law.

7. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED' LEGISLATION

Clause 30 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. Such rules may provide for matters, such as—

- (a) the time within which, and the manner in which, an intimation referred to in sub-clause (3) of clause 4 of the Bill shall be given; and
- (b) the manner in which the monies in any provident fund or other fund referred to in clause 13 shall be dealt with.

The matters in respect of which such rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of normal character.

AVTAR SINGH RIKHY,
Secretary